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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

December 13, 2010

The Committee on Legal Services met on Monday, December 13, 2010, at 1:36 p.m. in HCR 0112. The following members were present:

Representative Labuda, Chair
Representative B. Gardner (present at 1:37 p.m.)
Representative Kagan
Representative Roberts
Senator Brophy
Senator Morse, Vice-chair
Senator Schwartz

Representative Labuda called the meeting to order.

1:38 p.m. -- Chuck Brackney, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1a - Rules of the State Board of Human Services, Division of Aging and Adult Services, Department of Human Services, concerning implementation of the five-year bar from adult financial benefits for qualified aliens pursuant to H.B. 10-1384, 9 CCR 2503-1.

Mr. Brackney said the first rule has to do with the five-year waiting period that is imposed on qualified aliens before they can receive benefits from certain public assistance programs. We believe the problem with the rule is

that it extends two hardship exceptions that only apply to one program to two other programs to which those exceptions do not apply. The history on this goes all the way back to the federal welfare reform legislation from 1996, which imposed a five-year waiting period on aliens to receive benefits. Contrast that with the state's old age pension program, which is a state program created in the state constitution. Last year, the Joint Budget Committee sponsored some budget package bills, including House Bill 10-1384, which made some changes to the old age pension program. One of those was to increase the waiting period for aliens from 3 years to 5 years before they could get benefits under the program. This conformed that period to the federal five-year waiting period that I talked about, but it also conformed it with the waiting period for other programs, such as aid to the needy disabled and aid to the blind. Section 26-2-111 (2) (c) (I) (B), C.R.S., sets forth the five-year bar on the receipt of benefits. The other part of the statute, section 26-2-111 (2) (c) (II), C.R.S., sets forth the two hardship exceptions. If someone who is a qualified alien can show one of these two hardship exceptions, he or she can get around that five-year waiting period. In sub-subparagraph (A), the first exception is abandonment, mistreatment, abuse, and that sort of thing, which can allow someone in that situation to get around the five-year waiting period. Secondly, sub-subparagraph (B), makes an exception for indigents. Someone who can show one of those two circumstances can get around the five-year waiting period. The rule sets forth exceptions from the 5-year bar for three public assistance programs - not only the old age pension program, but also aid to the needy disabled program and aid to the blind. The problem with the rule is that the inclusion of subdivision C. in Rule 3.140.173 applies the hardship exceptions that were crafted just for the old age pension program to the aid to the needy disabled program and the aid to the blind program. The first paragraph of the rule talks about exceptions from the five-year bar requirement for all three of those programs. Subdivisions A. and B. are just fine, but subdivision C. refers to hardship exceptions. Those are mistreatment and indigence that were created specifically for the old age pension program. While the 5-year bar on receipt of public assistance by qualified aliens and subdivisions A. and B. of the rule do apply to all three public assistance programs - the old age pension program, the aid to the needy disabled, and the aid to the blind program - the hardship exceptions only apply to the old age pension program. Because section 26-2-111 (2) (c) (II), C.R.S., creates hardship exceptions only for the old age pension program and because the rule applies the hardship exceptions to the aid to the needy disabled program and the aid to the blind program, rule 3.140.173 C. exceeds the rule-making authority of the board and should not be extended.

Representative Kagan asked where in the statute does this specify that the hardship exceptions apply to the old age pension program? Mr. Brackney said in section 26-2-111 (2), C.R.S., and what follows subsection (2) applies only to that program.

1:43 p.m.

Hearing no further discussion or testimony, Senator Schwartz moved to extend Rule 3.140.173 C. of the Department of Human Services and asked for a no vote. Representative Gardner seconded the motion. The motion failed on a 0-7 vote, with Senator Brophy, Senator Morse, Senator Schwartz, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Roberts voting no.

1:45 p.m. -- Chuck Brackney addressed agenda item 1b - Rules of the State Board of Human Services, Department of Human Services, concerning release of information from closed adoption records, 12 CCR 2509-4.

Mr. Brackney said this rule issue has to do with the release of information from closed adoption records. For a little historical background, access to adoption records in Colorado depends on when the adoption was finalized and who is seeking access to the records. The statutes set out who may have access to the records based on certain time frames or windows in time, reflecting when the law on this topic has changed over the years. Prior to 1949, there was no law addressing this topic. However, in that year, the General Assembly passed a bill sealing adoption records. The law changed again in 1951 for adoptions finalized in that year. In 1967, the General Assembly passed a bill preserving the anonymity of birth parents, the child, and the adopting parents, known as the adoption triad. Finally, in 1999, the General Assembly made a significant change by making records open to inspection by the adoption triad and certain other individuals. That's the legislative history and there's also some court history. In 2009, the court of appeals case, *In re J.N.H.*, 209 P.3d 1221 (Colo. App. 2009), addresses the issue of whether an adult adoptee could have access to his records for an adoption finalized in 1965. The court found that the adoption triad should have access to adoption records during the time period from 1951 to 1967.

Mr. Brackney said the rules we'll be looking at were all adopted by the state board in response to this case. There are three rules and we believe they have a number of problems involving the use of terminology, some dates, and one that goes against something from the *J.N.H.* case. The first rule is rule 7.306.35 A. To discuss this rule, we need to look at two statutes, sections

19-5-402 and 19-5-403, C.R.S., which provide for the release, either directly or indirectly through a qualified licensed child placement agency, of certain nonidentifying adoption information to adult adoptees or adoptive parents. In those two statutes, the department is given some authority. Section 195-402, C.R.S., says the department shall provide directly to the inquiring adult adoptee or adoptive parent or to the child placement agency the nonidentifying information which is available to the department. The department shall adopt rules governing the disclosure of nonidentifying information. Section 19-5-403, C.R.S., similarly talks about how the department, by rule, shall establish qualifying criteria by which the licensed child placement agencies are chosen and shall release this information. These two sections of law make it clear that the department is the only entity with the authority to provide nonidentifying information that may be in the department's records directly to inquiring adult adoptees or adoptive parents, or, indirectly, those individuals who go through a qualified child placement agency. Helpfully, the term "department" is defined for us in statute at section 19-1-103 (37), C.R.S., where it says that the "department", as used in article 5 of this title, meaning the two sections we just looked at, means the state department of human services. Rule 7.306.35 A. says that pursuant to section 19-1-103(9), C.R.S., the state department or the county department shall release this information. By adding authority for the county departments to release this information, the rule conflicts with sections 19-5-402 and 19-5-403, C.R.S., which authorize such release only by the state department of human services. Because rule 7.306.35 A. includes the authority for county departments to release nonidentifying background information for adoptions, it conflicts with sections 19-5-402 and 19-5-403, C.R.S., and should not be extended.

Representative Labuda said I have a question because I thought that I read somewhere earlier in the history of the statute that at one time county departments could release this information. Am I correct? I'm just wondering if we want to have a change in statute. There must have been a reason that we limited it to the state department. I made a note of it, but I can't find where I came across an older statute that provided for counties to do it also.

1:49 p.m. -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, testified before the Committee. She said in this area specifically, on the nonidentifying information, it's just the state department of human services, not the county departments of social services. There is more information to come about the other remaining adoption records, but specific just to the nonidentifying information, it's just the state department that may release that information.

Representative Labuda asked if it's always been that way? Or did the law change? I thought at one time the counties had authority over that, too. Am I mixing up different sections? Ms. Gilroy said the law has changed. The nonidentifying information statutes were passed in 1987 and that's when the entire area was reworked, so prior to that it may have been different. I personally don't recall, but certainly since 1987 it's been the state department of human services.

Mr. Brackney said the next rule is rule 7.306.35 B. For this rule, we have a problem with the dates as well as some of the terminology. Section 19-5-305 (2) (a), C.R.S., addresses access to identifying adoption records associated with adoptions finalized prior to September 1, 1999. We're creating a window in time, a time period, that the rules apply to regarding adoption records. In subsection (2)(a) there are two dates. The outside date talks about adoptions finalized prior to September 1, 1999. A little farther on in subsection (2)(a), it talks about adoptions finalized on or after July 1, 1967. Our window from this time period runs from July 1, 1967, to September 1, 1999. Rule 7.306.35 B. talks about adoptions occurring between July 2, 1967, and July 1, 1999. Again, those two dates ought to be July 1, 1967 and September 1, 1999. In addition, the rule states that identifying information from this time frame may only be released by court order. However, the statute provides that all adoption records, not just identifying information, relating to adoptions finalized prior to September 1, 1999, are to remain confidential and the names of the parties and the adoptee are to remain anonymous if the adoption was finalized on or after July 1, 1967. Because rule 7.306.35 B. includes incorrect dates for the release of adoption records for adoptions finalized on or after July 1, 1967, and prior to September 1, 1999, it conflicts with section 19-5-305 (2) (a), C.R.S., and because the rule limits the confidentiality of such adoption records to only identifying information and not all adoption records, the rule should not be extended.

Mr. Brackney said the last rule is rule 7.306.35 C. Once again, we believe there is a problem with the dates and also a problem with the *In re J.N.H.* case from the court of appeals in 2009. In rule 7.306.35 C., we're, again, looking at two dates, a time frame. This is the one immediately prior to that time frame established in the rule we just looked at. The rule talks about adoptions that occurred in Colorado between July 1, 1951, and July 1, 1967. However, neither of these dates in the rule is correct. The legislation that changed the law regarding adoption records in 1951, which was House Bill 51-220, was signed by the governor on March 29 of that year and included a safety clause, making the effective date of the bill March 29, 1951, not July 1, 1951. The date of July 1, 1967, is incorrect because the legislation that changed the law

that year, House Bill 67-1001, took effect on July 1, meaning that the procedures for the release of records covered by rule 7.306.35 C. ended on June 30, 1967. These provisions were in effect prior to July 1, 1967, so those dates are incorrect. Rule 7.306.35 C. also states that adoption records from adoptions during this time period shall be released only to the adult adoptee or legal representative. However, the Colorado court of appeals in the *J.N.H.* case states that all members of the adoption triad - the birth parent and the adoptive parent as well as the adult adoptee - have the authority to access these records. In its opinion, the court observed that "during the period from 1951 to 1967, records of adoptions were not available to the public without a court order, but were available to the parties involved in the adoption process, now referred to as the 'adoption triad'." Once again we do have a statutory definition of "adoption triad" found in section 19-1-103 (6.7), C.R.S., which states the "adoption triad" means the three parties involved in an adoption: The adoptee, the birth parent, and the adoptive parent. Because rule 7.306.35 C. fails to include all members of the adoption triad among those who may have access to these adoption records, it conflicts with the opinion of the Colorado court of appeals in the *J.N.H.* case, and because it incorrectly identifies the effective dates of this period regarding the release of adoption records, it should not be extended.

Senator Brophy asked is there anything in the *J.N.H.* case that would affect the first rule that you brought up for our discussion involving information given out either by the state department of human services or the county departments? Ms. Gilroy said not directly, no. The case is addressing the gentleman trying to seek information about who his father was. He wanted identifying information. It wasn't focused on the nonidentifying information.

1:57 p.m.

Hearing no further discussion or testimony, Senator Schwartz moved to extend Rules 7.306.35 A., 7.306.35 B., and 7.306.35 C. of the State Board of Human Services and asked for a no vote. Representative Kagan seconded the motion. The motion failed on a 0-7 vote, with Senator Brophy, Senator Morse, Senator Schwartz, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Roberts voting no.

1:59 p.m. -- Michael Dohr, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1c - Rules of the State Board of Human Services, Department of Human Services, concerning competency evaluations in criminal cases, 2 CCR 502-4.

Mr. Dohr said this rule is related to the standards for approved evaluators who conduct competency evaluations in criminal cases. Rule 21.920 D. relates to the background check that an applicant who wants to become an approved evaluator must go through. Based on the rule, the background check includes a requirement that the applicant submit a sample for urinalysis. We have two reasons for believing that the board does not have the authority the rule. The first is that there is no specific statutory authority to provide a sample for urinalysis in the background check process. I'm sure you are all familiar with background checks during your time in the legislature. Those bills have probably dealt with the question as to whether it should be a fingerprint-based check or a name-based check. You will see, in this case, that as a part of that background check, they are also requiring a fingerprint-based check, which they do have statutory authority for under section 27-90-111, C.R.S., but there is no specific statutory authority for the sample for urinalysis. I think we probably can all agree that a sample for urinalysis is more intrusive than a fingerprint card, so, it follows that if the General Assembly has provided specific statutory authority for a fingerprint card, it should probably also provide specific statutory authority for a sample for urinalysis. Therefore, we don't believe the board has the authority to adopt the rule. Without that specific authority, it would need to fall back on the general rule-making authority. The general rule-making authority in this case relates to the training, education, and experience of the applicant. I don't believe that the sample for urinalysis would go to any of those three items, but even arguing if they do, the bigger issue here is that you're dealing with an individual applicant's 4th Amendment constitutional rights and we believe that, in those circumstances, when you have those questions, those questions should be answered by the General Assembly through the deliberative legislative process, not through a general grant of rule-making authority at the executive branch. Therefore, we're asking that rule 29.920 D. of the state board not be extended.

Representative Roberts asked, out of curiosity, is there any other application process that requires a urinalysis? Mr. Dohr said there is a statute that provides for drug testing of school employees in safety-sensitive positions, but it doesn't specifically say urinalysis. I think that's probably the closest thing we have in statute, and, presumably in this case, they're asking for the urinalysis sample for drug testing purposes.

Representative Roberts asked does urinalysis provide a product that has DNA sampling out of that? Mr. Dohr said I can't say for certain. I've actually done a lot of those DNA bills and they started doing just blood and then they went to the ability to swab the inside of the cheek. I would imagine you could

possibly get the DNA markers from that urinalysis sample, I've just never heard of them doing it that way before. It seems it would probably be similar to swabbing the cheek.

Representative Roberts said the rationale for even including that from the department is, we presume, safety. Mr. Dohr said yes, safety.

Representative Labuda said Representative Roberts was asking questions along the same line as I was thinking. I was thinking maybe the statute needs to be changed to allow the department to do that.

2:03 p.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 21.920 D. of the State Board of Human Services and asked for a no vote. Representative Gardner seconded the motion. The motion failed on a 0-7 vote, with Senator Brophy, Senator Morse, Senator Schwartz, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Roberts voting no.

2:04 p.m. -- Jason Gelender, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1d - Rules of the State Personnel Board and the Division of Human Resources, Department of Personnel, concerning personnel board rules and personnel director's administrative procedures, 4 CCR 801-1.

Mr. Gelender said what we have here is a rule that governs the type of leave and the amount of leave that state employees, and state employees only, are allowed when they are called away for volunteer firefighter duty. What we're dealing with is a basic conflict between the statutory requirement and what the rule specifies. For a little bit of background, before 2008, a statute in the title of the C.R.S. that applies to local government, section 31-30-1131, C.R.S., applied to all volunteer firefighters, whether they were employed by a public or private employer. What that statute said was that a volunteer firefighter was allowed unlimited, unpaid leave when they were called up to respond to a fire or local emergency. Keep in mind, what that statute intended to apply for was local situations. The typical local situation would be the fire chief calls up members of a volunteer fire department to respond to a house fire. In 2008, the General Assembly started becoming concerned that there were larger situations than just the local ones and that there should be additional job protection afforded to those people who are volunteers for what they call a qualified volunteer organization and are called up to respond to a disaster

emergency. When we talk about disaster, we're talking about something bigger that may require a longer leave of absence from work, such as forest fires, floods, or major tornadoes. That addressed not only firefighters, but today the rule addresses only firefighters. What's important is the applicable statute, section 24-32-2225 (1), C.R.S. It deals with this situation where a qualified volunteer is called up to respond to a disaster and it says they are entitled to a leave of absence and the amount of leave that's allowed is not more than 15 work days in any calendar year and that it's paid leave. Rule 5-21. D. has two conflicts with the statute. It says that we're dealing with 15 days per fiscal year, as opposed to calendar year, and the leave is unpaid rather than paid. Because of those two conflicts, we think rule 5-21. D. should not be extended.

2:08 p.m.

Hearing no further discussion or testimony, Senator Morse moved to extend Rule 5-21. D. of the Division of Human Resources and asked for a no vote. Representative Kagan seconded the motion. The motion failed on a 0-7 vote, with Senator Brophy, Senator Morse, Senator Schwartz, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Roberts voting no.

2:09 p.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed agenda item 2 - Approval of the Rule Review Bill and Sponsorship of the Rule Review Bill.

Ms. Haskins said this is the annual rule review bill for the Committee and it reflects the decisions the Committee made at the November meeting. What we will do is redraft the bill to add the rules that you just voted on at this meeting to the bill so that they would not be extended. I do need a motion to approve the bill as drafted with changes to incorporate your decisions today, and then we can talk about the sponsorship issue and some timing issues on the bill.

2:10 p.m.

Hearing no further discussion or testimony, Representative Kagan moved to approve the rule review bill draft dated December 7, 2010, as amended to incorporate the decisions made in Committee this afternoon, December 13. Senator Morse seconded the motion. The motion passed on a 7-0 vote, with Senator Brophy, Senator Morse, Senator Schwartz, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Roberts

voting yes.

Ms. Haskins said now we need to address an issue about sponsorship on the bill and try to get some direction from you about how you want to proceed. Last year's bill was a Senate bill carried by the Chair and Vice-chair, so it's the House's turn for the bill. I'm not sure how you want to handle dealing with the sponsors for the bill. Two years ago, the Committee started a practice where the Chair and Vice-chair were the sponsors of the bill, partly to make sure that we have members of the Committee who were actually still on the Committee who could shepherd the bill through the process. The only known House member we know of is Representative Gardner who will be the House Judiciary chair. We're kind of wondering what to do about sponsorship of the bill because we're not sure who all will be on the Committee next year. One thing you could do is wait until after your organizational meeting, which would be mid-January, and after you have your Chair and Vice-chair election and then you could introduce the bill. That would not delay the bill that much. I think that's my recommendation, but there are other options you could consider.

Representative Gardner said Ms. Haskins and I talked about this just before the meeting, and that seemed to be the best way. It's not altogether clear who is going to be the Chair and Vice-chair, even though I will be the sole member of the Committee sure to return. If it's not going to hold up the bill, it's probably better because I don't know what the plans are in the Senate or on the other side of the aisle. We may have a vastly different makeup of this Committee, so there might be sponsors who aren't even here.

Representative Labuda asked what is the date we would wait until? Ms. Haskins said we would wait until the organizational meeting and at that point we can put that on the agenda for that meeting. I think that's probably the best thing to do.

Senator Brophy asked if there's no trouble with drafting a bill that doesn't have an official sponsor? Ms. Haskins said no, because it's a committee bill and we're just waiting to find out who the sponsors are. We should try to have the bill introduced by the regular deadlines, which are February 2, so we have some time.

Representative Labuda asked if everyone is in agreement? The Committee indicated they agreed.

2:15 p.m. -- Jennifer Gilroy addressed agenda item 3 - Sponsorship of Other

Committee on Legal Services Bills: Revisor's Bill; Revisor's Bill on Persons First Language, and Bill to Enact the C.R.S.

Ms. Gilroy said I bring before you three more bills for your consideration. Two of them you're familiar with. One of them is our traditional bill to enact the statutes in order to make the 2010 Colorado Revised Statutes the positive statutory law of a general and permanent nature of the state of Colorado. This is a bill that is a nonsubstantive, technical bill that's introduced at the very beginning of the session and is among the first bills to be provided to the Governor for his consideration. I would recommend that we handle it the same way and not take the membership on it until you have your organizational meeting, should this Committee be inclined to proceed with it. The other bill is the annual revisor's bill. It's generally kind of a lengthy bill and it's up to about 100 sections as of today. Nate Carr in our Office has been working diligently on it over the past couple months. Again, it's a technical, nonsubstantive bill, looked at as a fix-up bill, intended to fix broken law that's apparent on its face and is noncontroversial. We tend to introduce it late in the session, obtaining delayed bill permission, so we can repair any bills that are going through the session that might need a little fix-up. It's generally passed in the final days of the session. Those two bills you're familiar with and I would seek this Committee's consideration of sponsoring those two bills for 2011.

Representative Gardner said he would gladly, as the sole member known to be returning, put myself forward to sponsor the revisor's bill as well as the bill to enact the Colorado Revised Statutes as permanent law.

Representative Labuda asked what is the sense of the Committee on sponsorship? Do you want to wait until we have our organizational meeting, too? Ms. Haskins said on these other Committee bills, as long as you have a volunteer to sponsor those, you don't need to wait for the organizational meeting. The reason we did that on the rule review bill is that the Committee is the committee of reference on that bill and that's not the case on these other bills. I think you can act today if you have willing sponsors.

Representative Labuda said we have a willing sponsor from the House. Do we have a willing sponsor from the Senate? Senator Brophy volunteered to sponsor the revisor's bill again. Senator Morse volunteered to sponsor the bill to enact the C.R.S.

Ms. Gilroy said the third bill is the revisor's bill on persons first language. This bill comes to you as a result of House Bill 10-1137, concerning the use

of people first language in the drafting of laws. Representative Gardner sponsored that bill and it was intended to avoid language that implicates a person as a whole as being disabled, like "the mentally ill", or "the blind", and to replace disrespectful language. Instead of a "disabled person", use language like a "person who has a disability" or a "person with a disability". It actually gives authority to the revisor of statutes to go through the statutes and make changes to existing law in addition to giving direction about drafting future additions to the Colorado Revised Statutes. As our Legislative Assistants go through and review their titles each and every fall, I asked them to look for language that they thought might be something that would be implicated by this bill that passed. They gave me grocery lists of terms and I began to see how very, very complicated this is, much more so than I was expecting. I tried to narrow the field for this first time out. My feeling from the legislation is that I have authority to do these changes on revision and I wouldn't have to bring it before you or the General Assembly. However, as a first step out, I thought I would go ahead and ask this Committee whether or not it wanted to sponsor a revisor's bill that addresses this. Using a very narrow search, I'm up to about 80 pages right now in the bill. I've given you just the first five pages of it to give you a flavor of the approach we're taking on it. We searched certain specific terms like "disabled", "blind", "developmentally disabled", "physically disabled", "lunatic", "emotionally disturbed", "paraplegic". Those are certain terms we thought we could address, and that's what this bill is covering right now, as carefully as we can without changing intent whatsoever. In fact, I've added a legislative declaration to show that it is intended to be nonsubstantive changes, that changes are being made pursuant to the bill that passed last year, and that there is no intent to make a substantive change. Even in the title of the bill we refer to nonsubstantive changes. I was very careful not to change any program names, not to change any law that is implicated in federal law, if the terms are used in federal law, I didn't make any changes in compacts, I didn't make any changes in uniform acts, and I didn't make any changes to forms because I didn't want to drive a fiscal note where a department felt it had to change a form because of it. I tried to be careful in how I approached it. I'm very happy to attempt this on revision, but if you feel like you would like to see what it looks like, if you would like the General Assembly to see how I'm approaching it, or you would like the public to see how it's being approached, I have a bill for your consideration.

Representative Gardner said my recollection of the bill was that it did not mandate that you do this. I commend you for doing it, but my recollection was that we would do this going forward, not necessarily spend a lot of resources trying to go back and clean up everything, because it sounds like a

gargantuan task. I appreciate you doing so, I'm just wondering do we need to do this? Ms. Gilroy said you're right. It authorizes me to make the changes, so it's not mandated at all. What we've done in other areas, for example, are gender neutralization. We tend to only do it when we're amending a section of law and we amend what's already in current law and then gender neutralize the new language. We can approach it that way as well. I have to confess there are areas that make me nervous. It seems like a simple enough task, but it really isn't. In fact, I've worked closely with Jane Ritter in our Office, who works with a lot of the communities that represent these areas, and I'm trying to be very, very careful not to use the wrong terminology, but even so, I fear I might make a mistake. I'm happy to go either way. I wanted to present it to you so you could see the scope of it and you all can decide how you want to proceed with it or if you would rather we just address like we do with gender neutralization and as it comes to our awareness through drafting we can run it by the sponsor of the bill and make changes.

Representative Gardner said my preference as the original bill sponsor is that we not try to do that. I recognize that if we try to do it on a wholesale basis, we may work all sorts of unintended consequences or induce things into the statutes that we're not thinking about. It might be better, given everyone's workload, to do it going forward. I think that's consistent with the intent of the statute. I really appreciate you taking a look at it and maybe as we go forward, when the opportunities present themselves, that's what we need to do. I hate to see a lot of work go in to trying to rewrite everything in the C.R.S. to make it consistent. I don't know what the sense of the Committee is.

Representative Kagan said I would just like to agree with Representative Gardner, but for different reasons. I think it's hard to find a sense in leaving an antiquated or formerly acceptable term in the statutes that is no longer acceptable, and I think inaccurately leaving it that way is actually a benefit because it gives you a better feeling as to the time when the statute was passed and what was acceptable at the time. I just don't think it's a big advantage to go backwards.

Representative Labuda said I want to thank Ms. Gilroy because just glancing at the draft language that you've given us, I can see how detailed the work needs to be and how you have to really consider how to replace the language that's in there. Is it the sense of the Committee that we proceed as we do for gender neutrality? The Committee indicated they agree.

Representative Gardner said I wanted to say thank you one more time to Ms.

Gilroy for starting the exercise and taking a good hard look at it, because I think the exercise probably adds some value of we need to be really careful as we do it not to work unintended changes in the bill.

Ms. Gilroy thanked Representative Gardner and added that it's not wasted energy. It heightened the awareness in our Office to go through the exercise and it also provided us with a baseline, so as we do approach terms in our drafting, this will give us the basis of how to make the changes as we proceed. It does provide us an historic basis. The word "lunatic" shocked many of us. It was not without a good result nonetheless and we'll be very aware of it as we proceed.

2:28 p.m. -- Jennifer Gilroy addressed agenda item 4 - Publication Matters: a. Elimination of C.J.S. and AmJur References in the annotations of the Colorado Revised Statutes; and b. Upcoming contract time line and preparation for more information to come in January/February.

Ms. Gilroy said I have two issues I wanted to bring before the Committee for your consideration. First, you may or may not be aware that we actually provide citations to the American Jurisprudence and Corpus Juris Secundum in our annotations to the Colorado Revised Statutes. We've been doing this for years. It requires a significant amount of time in our Office to actually pull the books and look at them. When Thomson Reuters, formerly West Publishing, changes the volume numbering system or changes anything in their books, we have to update that in our citations. You'll find them immediately following a statute preceding the cases that are in our annotations. I actually did a quick, unofficial survey in our Office to get a feel for the amount of time that's dedicated to them and our Legislative Assistants who do this work when they review their titles probably dedicate anywhere between 10 and 60 hours a year toward this, and that's not accounting for the time spent when they do have to do significant amendments to the annotations and then have to proofread them in the spring, first and last word, pages and pages of them. It's a significant time commitment. I don't know that we get the payback for it. I'm not sure our consumers really need them and I'm actually approaching you today because I'm considering a reallocation of time, the time that we dedicate to doing this job. We actually pursued this about 5 years ago. We contacted the Colorado Bar Association and asked them to do a survey among the bar members. We contacted the state judicial department, and we worked with the state attorney general's office to find out how much they used them. The bench said drop them, we don't need them. We learned from the survey at the bar association that about 46% of them would be inconvenienced if they didn't have them. I don't really put a lot of weight in

that because they got 132 responses out of some 18,000 members of the bar association. I don't think that was completely representative of them. Probably the people who don't use them ignored the survey, but I don't know that. The AG's office in 2005 said that about 1/3 of them do refer to them and in 2007 I got another e-mail from them who said more people, the second time we did the survey, said they don't rely on them at all. For those who don't know, these are just legal encyclopedias. They're not relied on or cited in briefs or motions that you file with the court. They're mainly for general research and it seems to me in this day and age people who are really electronically astute are looking at doing research in a totally different way then they do now. I'm very excited in working with LexisNexis about using those hours in a different way. We're working with them in doing hooks onto our statutes, so when you use the on-line statutes, you'll actually get a hook to a session law once a bill is enacted, long before the laws come out. Sometime in the late session into the spring, users on-line can see that a chapter passed that affects this particular section of law that they're looking at. Even in the summer before the statutes come out, I want a hook that gets you right to that section of law as the new law is going to be fed into it. Those, to me, would be better-spent hours than doing these C.J.S. and Am. Jur. searches, looking at the books and seeing where the citations are, when I really think people who are using C.J.S. and Am. Jur are doing it electronically and are doing word searches. My proposal to you is to allow us to scrub the C.J.S. and Am. Jur out of our statutes and to use those hours in a different way. It can be done with very little risk. I've worked with our in-house tech IT professional, and he can come up with a macro that will actually remove them from the statutes but preserve them in a database that can be merged back in so that we can use them if something happens that we need to put them back in. My request is that you consider that.

Representative Gardner asked would we continue to include the law review citations? Ms. Gilroy said yes we would. It would just be the C.J.S. and Am. Jur.

Representative Gardner said I'm a sample of one and my question probably reflects my own usage. I don't use the Am. Jur. or C.J.S. in the statutes much. From time-to-time I see the law review citations where somebody wrote in the *Colorado Lawyer* 15 years ago about this obscure statute and I'm ecstatic to find that anybody ever looked at it besides me and thought about it and wrote about it and gave me something that I could actually cite. That's important, and I think your point is well-taken, particularly the way I do my own research electronically. I think this is well-founded, but, again, I'm a sample of one, and I don't know what Representative Labuda or Representative Kagan as

users might think about it.

Representative Labuda said when you describe it, it does sound like busy work and I've had so much busy work in my lifetime that I'd be willing to drop these references. Does anybody on the Committee object to dropping these references to the C.J.S. and Am. Jur. in our annotations? The Committee indicated they do not object.

Representative Kagan said I agree with what Ms. Gilroy said. It sounds like a good idea and a better use of time to get these electronic hooks.

Ms. Gilroy said I have one more issue. This is a sort of save-the-date thing. For those of you who will be remaining on the Committee, I wanted to give you a heads up to let you know that 2011 will be a very active year in terms of the publication contract. The reason for that is because our current publication contract with LexisNexis will be expiring December 31, 2012. The statute requires that we have a new contract in place at least six months prior to that, so June 2012. I've been following the timeline that was used 10 years ago when the RFP was last put out. As you'll recall, five years ago, we merely extended the LexisNexis contract that was entered into in 2002. I'll be appearing before you again in January at your organizational meeting to give you my proposed timeline for the RFP process. As I work on the RFP, I will need this Committee to approve it sometime mid-summer. I would like to see it posted by August 2011 for you all to get bids in no later than the end of September and then have it on your agenda for October 2011, with possibly a decision that day but definitely presentations by those who submit a proposal for consideration. Once that publisher is selected, then I will work with that publisher on a contract and have it completed for your approval by mid-session 2012 for signature by all parties, including this Office and the controller, in time for the June deadline. I just wanted to give you the horizon that you'll be seeing me more and more in 2011 with the goal of getting that new contract in place.

2:38 p.m. -- Tom Morris, Senior Attorney, Office of Legislative Legal Services, addressed the Committee. He said this should be fairly short; there is no decision needed, just kind of an informational thing. Our Office is considering the issue of how to inform the General Assembly about court decisions because the courts do assume that the legislature is aware of court decisions. Currently, there isn't a process for informing the legislature about that, so we want to do something about that, and we want to get your feedback about it, though not now. We will contact you before January and try to get something set up shortly after that. The solution is to set up some sort of way

to regularly inform you and so we want the feedback from you about precisely which of the cases do you want to know about, because there's about 500. Do you want us to tell you about all of them or a subset of the significant ones, and there are different ways of trying to figure out what are the significant ones. There's kind of objective criteria, such as if the courts says it's unconstitutional or archaic or in conflict. There's more subjective factors that we could apply such as a case is getting a lot of press, it seems surprising or unexpected, it developed the law significantly, it was a close vote, it overturned a lower court. That's what we would first like to hear from you about, which of these cases do you really want to hear about because the number is large and if we just gave you 500 cases it might not be particularly useful. The second issue is to whom do we report. If we're sending information to committees of reference, for instance, as opposed to each member, that would be one thing. We could do both or different slices of the cases or we could do to both groups or some other group you might think is important. A third issue is what the format should be and there's two ways to think about that. One is we could send you an e-mail and we could create a document, kind of like the digest of bills, of all the cases or a subset of the cases. Also, what is in those documents, whether it's an e-mail or a hard copy document. The easiest thing to do would be to just use the case annotations that are already in the statutes. We're already creating those and it would be easy to compile them in whatever format you want, but if you've ever read some of those, there may not be a lot of context and if it's a significant case, it may be worthwhile for us to present and develop a more substantial case summary that really describes the facts - what was the procedure, what was the holding - as opposed to one or two sentences which is normally what our case annotations are like. The final issue is when would you want us to tell you about this. We can do it once a year. The easy time for us is late October, which is our cycle for getting all the case annotation information to LexisNexis. That's one period when we'll have that information all bundled together so we would know which ones fit into which category at that point in time. We could also update you semiannually, quarterly, during the session, or whatever you think might be useful, but I will mention that we often don't do a lot of case annotations during session because of other workload. Those kind of pile up and the large majority of those cases are not being analyzed during session. Our plan is to meet with you individually between now and hopefully the end of January and get some feedback on those issues. We do think it's something that the Office has a basic duty to the General Assembly to do.

Representative Labuda said I personally have no desire to see 500 decisions of the courts along with the 600 or so bills I'm going to be reviewing. If you

can do weeding out of some kind that would be much appreciated.

Representative Gardner said I appreciate the Office doing this. I think this can be a useful tool; we're just going to have to figure out how to winnow it down. I suspect most of the 500 court decisions construe some statute in some way, although maybe not in a remarkable way. I've had over the course of the last year two attorneys sit down and have lunch with me and tell me about something the court had done. The courts says we assume the General Assembly would have done this if that's what we intended and I used to always pull the books off the shelf and say what were they thinking and now I know what the answer to that is, so somehow closing that gap informationally is going to be useful, but we've got to make it a good product and one that we can then respond legislatively if we want to.

Mr. Morris said I would draw your attention to the chart in the handout, which shows an allocation of the various opinions to the different committees of reference, if you decide you want to go that way. Most of the committees get a decent number, but judiciary and economic and business development or business, labor, and technology get probably three-quarters of the total, which is a rather large number.

Representative Labuda said I think each of us looks forward to talking with you and how to become more informed about what the supreme court does.

2:46 p.m.

The Committee adjourned.